

SENATE BILL NO. 76

INTRODUCED BY D. HARGROVE

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO PAYMENT OF RESTITUTION BY CRIMINAL OFFENDERS; CLARIFYING THAT RESTITUTION MAY BE ORDERED WHEN A SENTENCE IS IMPOSED OR SUSPENDED; ALLOWING A COURT THAT ORDERS AN OFFENDER TO PAY RESTITUTION TO REQUIRE THE OFFENDER TO PROVIDE THE DEPARTMENT OF REVENUE WITH A CURRENT ADDRESS; PROVIDING A PENALTY FOR FAILURE TO PROVIDE A CURRENT ADDRESS; PROHIBITING THE TRANSFER TO ANOTHER STATE OF SUPERVISION OF A PROBATIONER OR PAROLEE WHO OWES RESTITUTION UNLESS THE VICTIM AGREES TO THE TRANSFER; AMENDING SECTIONS 46-18-201 AND 46-18-241, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or
(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise

1 specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6
2 months, whichever is greater, for each particular offense.

3 (3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of
4 guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

5 (a) a fine as provided by law for the offense;

6 (b) payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel
7 as provided in 46-8-113;

8 (c) a term of incarceration at a county detention center or state prison, as provided in Title 45,
9 for the offense;

10 (d) commitment of:

11 (i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a
12 recommendation for placement in an appropriate correctional facility or program; however, all but the first
13 5 years of the commitment to the department of corrections must be suspended; or

14 (ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an
15 offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for
16 placement in an appropriate correctional facility or program;

17 (e) with the approval of the facility or program, placement of the offender in a community
18 corrections facility or program as provided in 53-30-321;

19 (f) with the approval of the prerelease center or prerelease program and confirmation by the
20 department of corrections that space is available, placement of the offender in a prerelease center or
21 prerelease program for a period not to exceed 1 year;

22 (g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by
23 and for a period of time determined by the department of corrections, but not exceeding the period of state
24 supervision of the person; or

25 (h) any combination of subsections (2) through (3)(g).

26 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence,
27 the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the
28 period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed
29 under subsection (1)(a) or (2) may include but are not limited to:

30 (a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of court-appointed counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

(5) In addition to any penalties imposed pursuant to ~~subsection (1)~~ subsections (1) through (3), if the sentencing judge finds that the victim of the offense has sustained a pecuniary loss, the sentencing judge shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

(6) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(7) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 2. Section 46-18-241, MCA, is amended to read:

1 **"46-18-241. Condition of restitution -- requirement to provide state with current address --**

2 **penalty.** (1) As provided in 46-18-201, a sentencing court shall require an offender to make full restitution
3 to any victim of the offense who has sustained pecuniary loss as a result of the offense, including a person
4 suffering an economic loss as a result of the crime. The duty to pay full restitution under the sentence
5 remains with the offender until full restitution is paid.

6 (2) The court shall require the offender to pay the cost of supervising the payment of restitution,
7 as provided in 46-18-245, if the offender is able to pay, by paying an amount equal to 10% of the amount
8 of restitution ordered, but not less than \$5. Payment must be made to the court, which shall disburse the
9 money to the entity employing the person ordered to supervise restitution under 46-18-245.

10 (3) If at any time the court finds that, because of circumstances beyond the offender's control,
11 the offender is not able to pay any restitution, the court may order the offender to perform community
12 service during the time that the offender is unable to pay. The offender must be given a credit against
13 restitution due at the rate of the hours of community service times the state minimum wage in effect at
14 the time that the community service is performed.

15 (4) (a) The court may order an offender who owes restitution to provide the department of
16 revenue with the offender's current address and to notify the department of revenue of any subsequent
17 change of address. The court may order that the obligation to inform the department of revenue of the
18 offender's residence continues until the offender has fully satisfied the restitution obligation.

19 (b) An offender who is convicted of knowingly failing to provide the department of revenue with
20 the offender's current address, as required by subsection (4)(a), may be imprisoned in the county jail for
21 any term not to exceed 6 months or be fined an amount not to exceed \$1,000, or both."

22
23 **NEW SECTION. Section 3. Probationer or parolee -- restitution owed -- limitation on transfer of**
24 **supervision.** (1) Except as provided in subsection (2), the department may not transfer supervision of a
25 probationer or parolee who has been ordered to pay restitution to another state until the probationer or
26 parolee has fully paid the court-ordered restitution or has provided sufficient security to ensure that any
27 court-ordered restitution will be paid.

28 (2) The department may transfer supervision of a probationer or parolee with outstanding
29 restitution if the victim to whom the restitution is owed agrees to the transfer.

30 (3) This section does not apply to a parolee granted a medical parole.

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2 NEW SECTION. **Section 4. Codification instruction.** [Section 3] is intended to be codified as an
3 integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply
4 to [section 3].

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6 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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8 NEW SECTION. **Section 6. Retroactive applicability.** [Section 3] applies retroactively, within the
9 meaning of 1-2-109, to offenders currently under the supervision of the department of corrections who
10 have not, prior to [the effective date of this act], been granted permission to transfer their supervision to
11 another state.

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